

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

JOHN PIWOWARSKI,

Plaintiff,

v.

**Civil Action No. 3:08cv66
(Judge Bailey)**

**JEFFERSON COUNTY, WV,
Defendant.**

**REPORT AND RECOMMENDATION THAT APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF FEES BE DENIED**

On March 27, 2008, the *pro se* plaintiff, John F. Piwowarski, filed a complaint with the Court and an Application for Leave to proceed in forma pauperis. Because this District has adopted a new IFP form, the Clerk was directed to send the plaintiff the new form, and the plaintiff was directed to complete and return the same. On July 2, 2008, the plaintiff filed the new form along with an attachment from the State of West Virginia Department of Health and Human Services¹ which contains additional information with respect to his income.

The combined information provided by the plaintiff establishes that he receives gross monthly income of \$1072.02 from Social Security and a pension. In addition, he has a checking account with approximately \$500.00. Plaintiff owns a 1987 Toyota Van with a net value of \$1328.00. Therefore, the undersigned finds the plaintiff can afford the \$350.00 filing fee. Accordingly, the plaintiff's request to proceed without prepayment of fees should be denied, and the plaintiff should be ordered to pay the full filing fee. The plaintiff should also be warned that the failure to pay the full filing fee within the time allowed by the Court will result in the dismissal of

¹The attachment is a Combined Application and Review Form for Financial Assistance, Medical Assistance and Food Stamps. (Doc. 9-2).

his complaint.

The plaintiff may file, within ten (10) days after being served with a copy of this Recommendation, with the Clerk of the Court, written objections identifying the portions of the Recommendation to which objections are made, and the basis for such objections. A copy of such objections should also be submitted to the Honorable John Preston Bailey. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985) United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to the *pro se* plaintiff by certified mail, return receipt requested, to his last known address as reflected on the docket sheet..

DATED: July 3, 2008

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE